IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

S.B. CIVIL WRIT PETITION NO. 5979/2002

MEHTAB SINGH Vs. THE UNION OF INDIA & ORS.

DATE: 05.07.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. R.S. Bhadauria for the petitioner.
Mr. Tanveer Ahmed for
Mr. Bhawar Bagri for the respondents.

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The petitioner was enrolled in the Army on 01.02.1963 as 'Sipahi' and after rendering 15 years 29 days satisfactory service he was released from the Army and got enrolled in the Defence Security Corps (D.S.C.) on 28.10.83. The petitioner during service period was infected by disease of tuberculosis, as a result thereof he was downgraded to medical category 'EEE'. The medical board examined the petitioner and prior to his release from Army recommended 100% disability pension from the date of release i.e. 06.07.89. The petitioner was accordingly granted disability pension vide PPO No. B/2243/90 and he is getting 100% disability pension continuously.

The controversy is with regard to the period between 29.01.96 to 20.01.2001 during which the

disability pension has been discontinued. It is not disputed that the petitioner is suffering from the disease of tuberculosis and the medical board has assessed 100% disability for 5 years and his medical category was down graded to category 'EEE' and on account of 100% disability he was released from service w.e.f. 06.07.89. Again the medical board was held on 10.10.95 at Base Hospital, Delhi Cantt. and his disability was assessed 40% by the board. However, the Medical Advisor attached to the office of the CDA(P), Allahabad reduced the percentage of disability below 20% and discontinued disability element w.e.f 29.01.96 vide order dated 28.03.96.

It is contended that the Medical Advisor attached to the office of the CDA(P), Allahabad has no power to reduce the percentage of disability and the disability assessed by the medical board shall prevail.

In support of his submission the learned counsel for the petitioner has placed reliance on the judgment rendered by the Delhi High Court in the case of **Ex. LNK Gordhan and etc. Vs. Union of India and others, reported in 2002 LAB I.C. 1941,** wherein it has been held by the Delhi High Court that reduction by Chief Controller of Defence Accounts (Pensions)- Petitioner discharged from Armed Forces pursuant to

recommendation of Release Medical Board- Board assessed his disability as 30%- Petitioner again appeared before Re-Survey Medical Board whose recommendation was that disability had remained unchanged- Reduction of disability pension by Chief Controller of Defence Accounts (Pensions) is improper. The aforesaid judgment was rendered by the Delhi High Court after considering the judgment rendered by the Hon'ble Supreme Court in the case of **Ajmer Singh Vs. Union of India, 2001(2) SCT 927** and other judgments.

I have heard rival submissions of the respective parties and carefully gone through the recommendations of the medical board as well as the impugned order by which disability pension has been discontinued w.e.f. 29.01.96 vide order dated 28.03.96.

The respondents have not disputed the fact that the petitioner till date is getting 100% disability pension and it is also not disputed that the medical board held on 10.10.95 at Base Hospital, Delhi Cantt. has assessed the disability of the petitioner as 40% but the Medical Advisor attached to the office of the CDA(P), Allahabad has reduced the percentage of disability below 20% and as the person below 20% disability is not entitled to get disability pension, therefore, during the period between 29.01.96

to 20.01.2001 the disability pension has been stopped, which is per se contrary to the view expressed by the Hon'ble Supreme Court in the case of **Ajmer Singh (supra)** and the Delhi High Court in the case of **Ex. LNK Gordhan and etc. (supra).**

Consequently, the impugned order dated 28.03.96 deserves to be quashed and set-aside and the same is hereby quashed and set-aside. The petitioner is entitled to get the disability pension considering 40% disability of the petitioner for the period from 29.01.96 to 20.01.2001.

The writ petition stands allowed as observed herein above.

(K.S. RATHORE),J.

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